

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 544

Introduced by Senator Battin

February 18, 2005

An act to amend Section 3030 of the Family Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Battin. Sex offenders: custody and visitation.

Existing law requires a person convicted of certain sex offenses to register with the local law enforcement officer of the city or county where he or she resides or is located, as specified.

Existing law prohibits a person from being granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to register as a sex offender and the victim was a minor or the person has committed another specified crime against a child, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would delete that exception to the general prohibition against granting custody or visitation with respect to a child who is less than 14 years of age. ~~The bill would also provide that a court may not grant custody of or visitation with a child who is 14 years of age but not yet 18 years of age unless the court finds that there is no risk, rather than no significant risk, to the child.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3030 of the Family Code is amended to
2 read:

3 3030. (a) (1) No person shall be granted physical or legal
4 custody of, or unsupervised visitation with, a child *who is at least*
5 *14 years of age but not yet 18 years of age* if the person is
6 required to be registered as a sex offender under Section 290 of
7 the Penal Code where the victim was a minor, or if the person
8 has been convicted under Section 273a, 273d, or 647.6 of the
9 Penal Code, unless the court finds that there is no significant risk
10 to the child and states its reasons in writing or on the record.

11 (2) *No person shall be granted physical or legal custody of, or*
12 *unsupervised visitation with, a child who is less than 14 years of*
13 *age if the person is required to be registered as a sex offender*
14 *under Section 290 of the Penal Code if the victim was a minor, or*
15 *if the person has been convicted under Section 273a, 273d, or*
16 *647.6 of the Penal Code.*

17 (3) No person shall be granted physical or legal custody of, or
18 unsupervised visitation with, a child if anyone residing in the
19 person's household is required, as a result of a felony conviction
20 in which the victim was a minor, to register as a sex offender
21 under Section 290 of the Penal Code, unless the court finds there
22 is no significant risk to the child and states its reasons in writing
23 or on the record.

24 ~~(3)~~

25 (4) The fact that a child is permitted unsupervised contact
26 with a person who is required, as a result of a felony conviction
27 in which the victim was a minor, to be registered as a sex
28 offender under Section 290 of the Penal Code, shall be prima
29 facie evidence that the child is at significant risk. When making a
30 determination regarding significant risk to the child, the prima
31 facie evidence shall constitute a presumption affecting the burden
32 of producing evidence. However, this presumption shall not
33 apply if there are factors mitigating against its application,
34 including whether the party seeking custody or visitation is also
35 required, as the result of a felony conviction in which the victim
36 was a minor, to register as a sex offender under Section 290 of
37 the Penal Code.

1 (b) No person shall be granted custody of, or visitation with, a
2 child if the person has been convicted under Section 261 of the
3 Penal Code and the child was conceived as a result of that
4 violation.

5 (c) No person shall be granted custody of, or unsupervised
6 visitation with, a child if the person has been convicted of murder
7 in the first degree, as defined in Section 189 of the Penal Code,
8 and the victim of the murder was the other parent of the child
9 who is the subject of the order, unless the court finds that there is
10 no risk to the child's health, safety, and welfare, and states the
11 reasons for its finding in writing or on the record. In making its
12 finding, the court may consider, among other things, the
13 following:

14 (1) The wishes of the child, if the child is of sufficient age and
15 capacity to reason so as to form an intelligent preference.

16 (2) Credible evidence that the convicted parent was a victim of
17 abuse, as defined in Section 6203, committed by the deceased
18 parent. That evidence may include, but is not limited to, written
19 reports by law enforcement agencies, child protective services or
20 other social welfare agencies, courts, medical facilities, or other
21 public agencies or private nonprofit organizations providing
22 services to victims of domestic abuse.

23 (3) Testimony of an expert witness, qualified under Section
24 1107 of the Evidence Code, that the convicted parent experiences
25 intimate partner battering.

26 Unless and until a custody or visitation order is issued pursuant
27 to this subdivision, no person shall permit or cause the child to
28 visit or remain in the custody of the convicted parent without the
29 consent of the child's custodian or legal guardian.

30 (d) The court may order child support that is to be paid by a
31 person subject to subdivision (a), (b), or (c) to be paid through
32 the local child support agency, as authorized by Section 4573 of
33 the Family Code and Division 17 (commencing with Section
34 17000) of this code.

35 (e) The court shall not disclose, or cause to be disclosed, the
36 custodial parent's place of residence, place of employment, or the
37 child's school, unless the court finds that the disclosure would be
38 in the best interest of the child.

39 ~~SECTION 1. Section 3030 of the Family Code is amended to~~
40 ~~read:~~

~~3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child who is at least 14 years of age but not yet 18 years of age if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no risk to the child and states its reasons in writing or on the record.~~

~~(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child who is less than 14 years of age if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code.~~

~~(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.~~

~~(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:~~

~~(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.~~

~~(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.~~

~~(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.~~

1 ~~Unless and until a custody or visitation order is issued pursuant~~
2 ~~to this subdivision, no person shall permit or cause the child to~~
3 ~~visit or remain in the custody of the convicted parent without the~~
4 ~~consent of the child's custodian or legal guardian.~~

5 ~~(d) The court may order child support that is to be paid by a~~
6 ~~person subject to subdivision (a), (b), or (c) to be paid through~~
7 ~~the local child support agency, as authorized by Section 4573 of~~
8 ~~the Family Code and Division 17 (commencing with Section~~
9 ~~17000) of this code.~~

10 ~~(e) The court shall not disclose, or cause to be disclosed, the~~
11 ~~eustodial parent's place of residence, place of employment, or the~~
12 ~~child's school, unless the court finds that the disclosure would be~~
13 ~~in the best interest of the child.~~